

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor : Nicolas Ibrahim Appln. No. : 10/553,535 Filed : December 14, 2006 For : RADIO TRANSMISSION METHOD EMPLOYING SEVERAL DIFFERENT PILOT PATTERNS, CORRESPONDING BASE STATION, MOBILE, SYSTEM AND RECEPTION METHOD Docket No. : W51.12-0022		Confirmation No. 5993 Group Art Unit: 2617 Examiner: Khan, Mehmood B.
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REQUEST FOR WITHDRAWAL OF PREMATURE FINAL REJECTION

UNDER M.P.E.P. §706.07(d)

ELECTRONICALLY FILED NOVEMBER 16, 2010

Sir:

Applicant requests for withdrawal of the premature final rejection, mailed September 16, 2010, since Applicant's amendment could not have necessitated a new ground of rejection.

I. WITHDRAWAL OF PREMATURE FINAL REJECTION

A. Final Rejection - When Proper

Under §M.P.E.P. §706.07(a), second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims, nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c).

Applicant's amendment did not necessitate a new ground of rejection, and Applicant did not file an IDS during the period set forth in 37 CFR 1.97(c).

B. It is Not Possible that Applicant's Amendment Necessitated a New Ground of Rejection

1. Only Antecedent Basis Amendments

Applicant made only antecedent basis amendments, such as the “multicarrier data transmission signal”, in response to an explicit request from the Examiner in the previous office action.

2. Prior Office Action Contained only a Single Antecedent Basis Rejection

The prior office action contained only a single rejection, which related to the “multicarrier data transmission signal.”

3. New Rejections are Unrelated to Prior rejections or any Amendment by Applicant

The present office action contains new rejections under §112 not raised in the prior office action and not related to any of Applicant’s antecedent basis amendments. For example the terms objected to by the Examiner, “the value”, “for which the value” and “the transfer function” are not related to any amendment by Applicant to correct antecedent basis for the “multicarrier data transmission signal.”

Further, the new office action contains new rejection under §102(b) based on a newly cited Reference, Laroia et al. It is **not possible** for this new ground of rejection to have been necessitated by Applicant’s mere antecedent basis amendment.

4. New Ground of Rejection Likely Based on Transfer to New Examiner

It appears to Applicant that the present applicant has been transferred to a new Examiner with this new office action. Applicant suspect that the new ground of rejection is based on a new search performed by the new Examiner due to the file transfer and not due to any amendment by Applicant. This is not a proper basis for a final rejection.

C. **Finality Must be Withdrawn - Incomplete Prior Office Action**

The present office action contains new grounds of rejection not raised in the prior office action mailed June 9, 2009 and not necessitated by any amendment by Applicant. Thus, these grounds of rejection should have been raised in the prior office action.

Rule 37 C.F.R. §1.104(b) requires an examiner to make an Office action complete as to all matters, with certain rare exceptions where appropriate (in cases such as misjoinder of

invention, fundamental defects in the application, or mere formalities), none of which exceptions apply in the present case.

Since the prior office action was incomplete, in non-compliance with Rule 1.104(b), and since the present office action raises new grounds of rejection not necessitated by any amendment by Applicant, the finality of the rejection is improper and must be withdrawn.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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